

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5755 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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MAKWANA TULSIBHAI DHANABHAI

Versus

STATE OF GUJARAT

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Appearance:

MR UI VYAS for Petitioner

MR SK PATEL for Respondent No. 1, 2, 3

None present for Respondent No. 4

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/10/1999

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. The petitieonr, by this special civil application, prayed for directions to the respondents to treat him as continuing in services from 5.12.77 and grant salary for the period from 5.12.77 to 6.4.80 and increments in

respect of the above period and difference of salary as a result thereof in respect of the period after 6.4.80.

#. During the course of arguments, the learned counsel for the petitioner has not pressed for claim of petitioner for salary for the period from 5.12.77 to 6.4.80.

#. The facts of the case are that the petitioner had left the services of the respondent from 5.12.77. He was a teacher. He left the services on the ground that it was not safe for him to continue there as he had apprehension of endangerment to his life from the members of upper caste community of the village.

#. The petitioner remained absent from duty and despite of giving notice, he has not returned to duty but on his request, ultimately a sympathetic view has been taken and he has been taken back in service as fresh employee. For this absence which is clearly an unauthorized absence, the petitioner's services could have been dispensed with but the respondents have acted very fairly and reasonable and extended the benefits for which otherwise, legally he would not have been entitled. This long absence of the petitioner, a teacher, is itself a serious and grave misconduct and he has exposed himself for disciplinary action, but still, the respondents have acted liberally and have taken him back in service, though as a fresh employee. In these facts, the claim of the petitioner as made in the special civil application is wholly misconceived and cannot be granted. The petitioner, in case is granted such a relief, this court will endorse his misconduct and it will result in giving benefit to indisciplined employees. The petitioner has not produced any material from which it can be accepted or believed that what he stated for remaining absent is a correct ground. Such type of plea and ground can be manipulated. In case this fact would have been correct, the petitioner should have taken appropriate legal remedy. That has not been done. Now when he remained absent for three years, he has come up with all these pleas. Otherwise also, the petitioner has not challenged the order dated 3.4.80 within reasonable time. This special civil application is filed after seven years of passing of the order and in case such a relief is granted, it will adversely affect the seniority of many of the persons who became senior to him. Behind the back of those persons no such relief can be granted. In the matter of grant of relief, it is not the only concern of the court to see the case of the petitioner but the court has also to look into what will be the consequence of such relief upon the right of those

employees who are not before it. This is a case where the petitioner wants to take benefit of his own wrong and which cannot be granted. In this case, much lenient view has been taken by respondents than what it was necessary and no further indulgence can be granted by this Court under Article 226 of the Constitution of India. It is not the case where any of the legal or fundamental rights of the petitioner are being infringed. On the contrary, the petitioner wants to get benefits though he has committed serious and grave misconduct.

#. As a result of the aforesaid discussion, I do not find any merits in the special civil application and the reliefs prayed for by petitioner cannot be granted. Consequently, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. No order as to costs.

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[sunil]